

## Securities and Exchange Commission

## § 240.15c2-5

CROSS REFERENCE: For interpretative releases applicable to § 240.15c2-1, see Nos. 2690 and 2822 in tabulation, part 241 of this chapter.

[13 FR 8205, Dec. 22, 1948, as amended at 31 FR 7741, June 1, 1966; 37 FR 73, Jan. 5, 1972; 63 FR 59397, Nov. 3, 1998]

### § 240.15c2-3 [Reserved]

### § 240.15c2-4 Transmission or maintenance of payments received in connection with underwritings.

It shall constitute a “fraudulent, deceptive, or manipulative act or practice” as used in section 15(c)(2) of the Act, for any broker, dealer or municipal securities dealer participating in any distribution of securities, other than a firm-commitment underwriting, to accept any part of the sale price of any security being distributed unless:

(a) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(b) If the distribution is being made on an “all-or-none” basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs, (1) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (2) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

[41 FR 22826, June 7, 1976]

### § 240.15c2-5 Disclosure and other requirements when extending or arranging credit in certain transactions.

(a) It shall constitute a “fraudulent, deceptive, or manipulative act or practice” as used in section 15(c)(2) of the Act for any broker or dealer to offer or sell any security to, or to attempt to

induce the purchase of any security by, any person, in connection with which such broker or dealer directly or indirectly offers to extend any credit to or to arrange any loan for such person, or extends to or participates in arranging any loan for such person, unless such broker or dealer, before any purchase, loan or other related element of the transaction is entered into:

(1) Delivers to such person a written statement setting forth the exact nature and extent of (i) such person’s obligations under the particular loan arrangement, including among other things, the specific charges which such person will incur under such loan in each period during which the loan may continue or be extended, (ii) the risks and disadvantages which such person will incur in the entire transaction, including the loan arrangement, (iii) all commissions, discounts, and other remuneration received and to be received in connection with the entire transaction including the loan arrangement, by the broker or dealer, by any person controlling, controlled by, or under common control with the broker or dealer, and by any other person participating in the transaction; *Provided, however,* That the broker or dealer shall be deemed to be in compliance with this paragraph if the customer, before any purchase, loan, or other related element of the transaction is entered into in a manner legally binding upon the customer, receives a statement from the lender, or receives a prospectus or offering circular from the broker or dealer, which statement, prospectus or offering circular contains the information required by this paragraph; and

(2) Obtains from such person information concerning his financial situation and needs, reasonably determines that the entire transaction, including the loan arrangement, is suitable for such person, and retains in his files a written statement setting forth the basis upon which the broker or dealer made such determination; *Provided, however,* That the written statement referred to in this paragraph must be made available to the customer on request.

(b) This section shall not apply to any credit extended or any loan arranged by any broker or dealer subject

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to the provisions of Regulation T (12 CFR part 220) if such credit is extended or such loan is arranged, in compliance with the requirements of such regulation, only for the purpose of purchasing or carrying the security offered or sold: *Provided, however,* That notwithstanding this paragraph, the provisions of paragraph (a) shall apply in full force with respect to any transaction involving the extension of or arrangement for credit by a broker or dealer (i) in a special insurance premium funding account within the meaning of section 4(k) of Regulation T (12 CFR 220.4(k)) or (ii) in compliance with the terms of § 240.3a12-5 of this chapter.

(c) This section shall not apply to any offer to extend credit or arrange any loan, or to any credit extended or loan arranged, in connection with any offer or sale, or attempt to induce the purchase, of any municipal security.

(d) This section shall not apply to a transaction involving the extension of credit by an OTC derivatives dealer, as defined in § 240.3b-12, if the transaction is exempt from the provisions of Section 7(c) of the Act (15 U.S.C. 78g(c)) pursuant to § 240.36a1-1.

(Sec. 3(a)(12), 48 Stat. 882, as amended, 84 Stat. 718, 1435, 1499 (15 U.S.C. 78c(12)); sec. 7(c), 48 Stat. 886, as amended, 82 Stat. 452 (15 U.S.C. 78g(c)); sec. 11(d)(1), 48 Stat. 891 as amended, 68 Stat. 686 (15 U.S.C. 78k(d)(1)); sec. 15(c), 48 Stat. 895, as amended, 52 Stat. 1075, 84 Stat. 1653 (15 U.S.C. 78o(c)); sec. 23(a), 48 Stat. 901, as amended, 49 Stat. 704, 1379 (15 U.S.C. 78w(a))

[40 FR 6646, Feb. 13, 1975, as amended at 41 FR 22826, June 7, 1976; 63 FR 59397, Nov. 3, 1998]

## § 240.15c2-6 [Reserved]

## § 240.15c2-7 Identification of quotations.

(a) It shall constitute an attempt to induce the purchase or sale of a security by making a “fictitious quotation” within the meaning of section 15(c)(2) of the Act, for any broker or dealer to furnish or submit, directly or indirectly, any quotation for a security (other than a municipal security) to an inter-dealer quotation system unless:

(1) The inter-dealer-quotation-system is informed, if such is the case, that

the quotation is furnished or submitted;

(i) By a correspondent broker or dealer for the account or in behalf of another broker or dealer, and if so, the identity of such other broker or dealer; and/or

(ii) In furtherance of one or more other arrangements (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) between or among brokers or dealers, and if so, the identity of each broker or dealer participating in any such arrangement or arrangements: *Provided, however,* That the provisions of this subparagraph shall not apply if only one of the brokers or dealers participating in any such arrangement or arrangements furnishes or submits a quotation with respect to the security to an inter-dealer-quotation-system.

(2) The inter-dealer-quotation-system to which the quotation is furnished or submitted makes it a general practice to disclose with each published quotation, by appropriate symbol or otherwise, the category or categories (paragraph (a)(1)(i) and/or (ii) of this section) in furtherance of which the quotation is submitted, and the identities of all other brokers and dealers referred to in paragraph (a)(1) of this section where such information is supplied to the inter-dealer-quotation-system under the provisions of paragraph (a)(1) of this section.

(b) It shall constitute an attempt to induce the purchase or sale of a security by making a “fictitious quotation,” within the meaning of section 15(c)(2) of the Act, for a broker or dealer to enter into any correspondent or other arrangement (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) in furtherance of which two or more brokers or dealers furnish or submit quotations with respect to a particular security unless such broker or dealer informs all brokers or dealers furnishing or submitting such quotations of the existence of such correspondent and other arrangements, and the identity of the parties thereto.